

Article - Education

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§5–235.

(a) (1) (i) Subject to subsection (o) of this section and beginning in fiscal year 2023, the county governing body shall levy and appropriate an annual tax sufficient to provide an amount of revenue for elementary and secondary public education purposes equal to the local share of major education aid as adjusted under § 5–239 of this subtitle.

(ii) For the purposes of calculating the local share of major education aid and regardless of the source of the funds, all funds that a county board, including the Baltimore City Board of School Commissioners, is authorized to expend for schools may be considered as levied by the county council, board of county commissioners, or the Mayor and City Council of Baltimore except for:

1. State appropriations;
2. Federal education aid payments; and
3. The amount of the expenditure authorized for debt service and capital outlay.

(2) (i) Subject to subsection (o) of this section and except as provided in subparagraphs (ii), (iii), and (iv) of this paragraph, the county governing body shall appropriate local funds to the school operating budget in an amount no less than the product of the county's enrollment count for the current fiscal year and the local appropriation on a per pupil basis for the prior fiscal year using enrollment count.

(ii) Except as provided in subsection (c)(2) of this section, in fiscal years 2022 and 2023, if a county's education effort, as defined in subsection (j) of this section, is below 100% of the statewide 5-year moving average of education effort, the required maintenance of effort amount for the county shall be adjusted by increasing the per pupil amount by the lesser of:

1. The county's increase in the local wealth per pupil using the September 2019 full-time equivalent enrollment;
2. The statewide average increase in local wealth per pupil using the September 2019 full-time equivalent enrollment; or

3. 2.5%.

(iii) Except as provided in subparagraph (iv) of this paragraph, for fiscal year 2023, the county governing body shall appropriate local funds to the school operating budget in an amount not less than:

1. The fiscal year 2021 local appropriation divided by the greater of:

A. The full-time equivalent enrollment in September 2019; or

B. The 3-year average of the full-time equivalent enrollment for September 2017, 2018, and 2019; multiplied by

2. The greater of:

A. The full-time equivalent enrollment in September 2021; or

B. The 3-year average of the full-time equivalent enrollment for September 2018, 2019, and 2021.

(iv) If a county is required to make an adjustment under subparagraph (ii) of this paragraph in fiscal year 2022, for fiscal year 2023, the county governing body shall appropriate local funds to the school operating budget in an amount not less than:

1. The fiscal year 2022 local appropriation divided by the greater of:

A. The full-time equivalent enrollment in September 2019; or

B. The 3-year average of the full-time equivalent enrollment for September 2017, 2018, and 2019; multiplied by

2. The greater of:

A. The full-time equivalent enrollment in September 2021; or

B. The 3-year average of the full-time equivalent enrollment for September 2018, 2019, and 2021; multiplied by

3. The per pupil increase required under subparagraph (ii) of this paragraph in fiscal year 2023.

(b) Except as provided in subsection (c) of this section, for purposes of this section, the local appropriation on a per pupil basis for the prior fiscal year for a county is derived by dividing the county's highest local appropriation to its school operating budget for the prior fiscal year by the county's enrollment count for the prior fiscal year. For example, the calculation of the foundation aid for fiscal year 2003 shall be based on the highest local appropriation for the school operating budget for a county for fiscal year 2002. Program shifts between a county operating budget and a county school operating budget may not be used to artificially satisfy the requirements of this paragraph.

(c) (1) For purposes of this subsection, the calculation of the county's highest local appropriation to its school operating budget for the prior fiscal year shall exclude:

(i) A nonrecurring cost that is supplemental to the regular school operating budget, if the exclusion qualifies under regulations adopted by the State Board;

(ii) A cost of a program that has been shifted from the county school operating budget to the county operating budget;

(iii) The cost of debt service incurred for school construction projects; and

(iv) For a county that shifts the recurring costs associated with providing retiree health benefits for current retirees to the county board, any reduction in those retiree health costs from the amount the county was required to appropriate in the previous year.

(2) For purposes of the adjustment required under subsection (a)(2)(ii) of this section, a county that dedicates to public school construction any additional State funds received from recurring retiree health costs shifted to the county board may exclude those retiree health costs from the highest local appropriation on a per pupil basis.

(d) The county board must present satisfactory evidence to the county government that any appropriation under subsection (c)(1) of this section is used only for the purpose designated by the county government in its request for approval.

(e) Any appropriation that is not excluded under subsection (c)(1) of this section as a qualifying nonrecurring cost shall be included in calculating the county's highest local appropriation to its school operating budget.

(f) Qualifying nonrecurring costs, as defined in regulations adopted by the State Board, shall include but are not limited to:

- (1) Computer laboratories;
- (2) Technology enhancement;
- (3) New instructional program start-up costs; and
- (4) Books other than classroom textbooks.

(g) (1) Subject to paragraph (2) of this subsection, if a county's ability to fund the maintenance of effort requirement in subsection (a) of this section is impeded, the county shall apply under subsection (h) of this section to the State Board for a waiver.

(2) If a county fails to apply to the State Board for a waiver from the maintenance of effort requirement and fails to meet the maintenance of effort requirement:

(i) The county shall be assessed in accordance with subsection (o) of this section; and

(ii) The minimum appropriation of local funds required under this section for the next fiscal year shall be calculated based on the per pupil local appropriation for the prior fiscal year in which the county met the maintenance of effort requirement under subsection (a) of this section.

(h) (1) The maintenance of effort requirement in subsection (a) of this section does not apply to a county if the county requests and is granted a waiver from the requirement by the State Board based on:

(i) A determination under this subsection that the county's fiscal condition significantly impedes the county's ability to fund the maintenance of effort requirement;

(ii) Subject to subsection (i) of this section, an agreement between the county and the county board to reduce recurring costs;

(iii) Subject to subsection (j) of this section, a determination that a county's ability to meet the maintenance of effort requirement is permanently impeded; or

(iv) Subject to subsection (k) of this section, a determination that lease payments were made by the county board to a county revenue authority or private entity holding title to property used as a public school by a county board in accordance with § 4-114(c)(1) or (d) of this article.

(2) In order to qualify for a waiver for a fiscal year, a county shall make a request for a waiver to the State Board by the earlier of the seventh day following the end of the legislative regular session or April 20 of the prior fiscal year.

(3) The State Superintendent shall provide a preliminary assessment of a waiver request to the State Board before a public hearing held in accordance with paragraph (4) of this subsection.

(4) Before acting on a request for a waiver, the State Board shall hold a public hearing in accordance with regulations adopted by the State Board.

(5) Except as provided in subsection (i) of this section, when considering whether to grant a county's waiver request, the State Board shall consider the following factors:

(i) External environmental factors such as a loss of a major employer or industry affecting a county or a broad economic downturn affecting more than one county;

(ii) A county's tax base;

(iii) Rate of inflation relative to growth of student population in a county;

(iv) Maintenance of effort requirement relative to a county's statutory ability to raise revenues;

(v) A county's history of exceeding the required maintenance of effort amount under subsection (a)(2) of this section;

(vi) An agreement between a county and a county board that a waiver should be granted;

(vii) Significant reductions in State aid to a county and municipalities of the county for the fiscal year for which a waiver is requested;

(viii) The number of waivers a county has received in the past 5 years; and

(ix) The history of compensation adjustments for employees of the county board and county government.

(6) The State Board shall inform the county whether the waiver for a fiscal year is approved or denied in whole or in part no later than 30 days after receipt of an application or May 20 of the prior fiscal year, whichever is earlier.

(7) Except as provided in subsections (i) and (j) of this section, if a county is granted a waiver from the provisions of this section by either the State Board or the General Assembly for any fiscal year, the minimum appropriation of local funds required under this section for the next fiscal year shall be calculated based on the per pupil local appropriation for the prior fiscal year in which the county met the maintenance of effort requirement under subsection (a) of this section.

(i) (1) This subsection applies to a county that requests a waiver under subsection (h)(1)(ii) of this section.

(2) (i) The State Board shall grant a waiver request in the amount that has been agreed on by the county and county board that is attributable to reductions in recurring costs.

(ii) If the reduction in recurring costs includes reductions in personnel or personnel costs, then the State Board shall grant a waiver request in the amount that has been mutually agreed on by the county, county board, and exclusive employee representative.

(3) The amount of the agreed on waiver may be less than the entire amount of the reduction in recurring costs.

(4) The amount of the agreed on waiver may not:

(i) Exceed the entire amount of the reduction in recurring costs; or

(ii) Reduce a county's education appropriation below the amount required in subsection (a)(1) of this section.

(5) The minimum appropriation of local funds required under this section for the next fiscal year shall be calculated based on the per pupil local

appropriation for the current fiscal year approved by the State Board under this subsection.

(j) (1) In this subsection the following terms have the meanings indicated.

(i) “Education appropriation” includes any money redirected to a county board under subsection (o) of this section.

(ii) “Education effort” means a county’s education appropriation divided by the county’s wealth.

(iii) “5–year moving average” means the average of the 5 years before the waiver year.

(iv) “Waiver year” means the fiscal year for which a waiver from the maintenance of effort requirement in subsection (a) of this section is requested.

(2) This subsection applies to a county that has:

(i) Received a waiver under subsection (h)(1)(i) of this section from the maintenance of effort requirement; and

(ii) A required county education appropriation under subsection (a) of this section for the waiver year that exceeds 100% of the statewide 5–year moving average of education effort times a county’s local wealth.

(3) A county that satisfies the requirements under paragraph (2) of this subsection may request a rebasing waiver from the State Board.

(4) When considering whether to grant a county’s waiver request under this subsection, the State Board shall consider the following factors:

(i) Whether a county has submitted sufficient evidence that the factors in subsection (h)(5) of this section will affect a county’s ongoing ability to meet the maintenance of effort requirement;

(ii) Whether a county is at its maximum taxing authority under the law;

(iii) Whether a county’s education appropriation is commensurate with a county’s wealth;

(iv) Whether a county's history of exceeding the required maintenance of effort has made meeting the maintenance of effort requirement in future years unsustainable; and

(v) Whether a county has received a rebasing waiver in the past 5 years.

(5) If the State Board grants a rebasing waiver under this subsection, the amount of the waiver for any fiscal year is limited to the lesser of:

(i) An amount that would result in a county's education effort for the waiver year falling below the level established in paragraph (2)(ii) of this subsection; or

(ii) 1. For a county with a 5-year moving average for education effort that is less than or equal to 110% of the statewide 5-year moving average of education effort, 1% of the county's required maintenance of effort requirement;

2. For a county with a 5-year moving average for education effort that is more than 110% and less than or equal to 120% of the statewide 5-year moving average of education effort, 2% of the county's required maintenance of effort requirement; or

3. For a county with a 5-year moving average for education effort that is more than 120% of the 5-year moving statewide average of education effort, 3% of the county's required maintenance of effort requirement.

(6) (i) If the State Board grants a rebasing waiver under this subsection, the minimum appropriation of local funds required under this section for the next fiscal year shall be calculated based on the per pupil local appropriation for the current fiscal year approved by the State Board under this subsection.

(ii) If the State Board grants a rebasing waiver to be implemented over a multiyear period, which may not exceed 3 years, in each year the minimum appropriation of local funds required under this section for the next fiscal year shall be calculated based on the per pupil local appropriation for the current fiscal year approved by the State Board under this subsection.

(7) If the State Board does not grant a waiver under this subsection, the minimum appropriation of local funds required under this section for the next fiscal year shall be calculated based on the per pupil local appropriation for the prior fiscal year in which the county met the maintenance of effort requirement under subsection (a) of this section.

(8) Nothing in this subsection precludes a county from also requesting a waiver from the maintenance of effort requirement under subsection (i) of this section for the same fiscal year as the waiver requested under this subsection.

(k) (1) This subsection applies to a county that requests a waiver under subsection (h)(1)(iv) of this section.

(2) (i) The State Board shall grant a waiver request in the amount that has been agreed on by the county and the county board that is attributable to the amount of the lease payment.

(ii) The amount of the agreed-on waiver may be less than the entire amount of the lease payment.

(iii) The amount of the agreed-on waiver may not:

1. Exceed the entire amount of the lease payment; or
2. Reduce a county's education appropriation below the amount required in subsection (a)(1) of this section.

(3) If the county and county board have not agreed on an amount, the State Board may grant a waiver on a determination that the lease payments are comparable to the amount of debt service that would otherwise be required if the alternative financing had not been used.

(4) If the State Board grants a waiver under this subsection, the State Board shall determine the number of fiscal years for which the waiver is applicable and the minimum appropriation of local funds required under this section for the fiscal year after the expiration of the waiver.

(l) In making the calculations required under this section, the Department shall consult with the Department of Budget and Management and the Department of Legislative Services.

(m) (1) A county shall submit to the Superintendent the county's approved budget no later than 7 days after approval of the budget or June 30, whichever is earlier.

(2) No later than 15 days after receipt of the county's approved budget the Superintendent shall certify whether the county has met the funding requirements established under this section and shall notify the county and county board of that certification.

(n) On or before December 31 of each year the Department shall report to the Governor and, in accordance with § 2–1257 of the State Government Article, the General Assembly, on all waiver requests, maintenance of effort calculations made by the Department and the county, the Department’s decisions regarding waiver requests, the Department’s certification of whether a county has met the requirement, and any other information relating to a county’s request for a waiver and the Department’s maintenance of effort decisions.

(o) (1) If the Superintendent finds that a county is not complying with the provisions of subsection (a) of this section, the Superintendent shall notify the county of such noncompliance.

(2) If a county disputes the finding within 15 days after the issuance of a notice under paragraph (1) of this subsection, the dispute shall be referred promptly to the State Board for a final determination.

(3) (i) Within 15 days of receipt of certification of noncompliance by the Superintendent or the State Board and subject to subparagraph (ii) of this paragraph, the Comptroller shall, under § 2–608 of the Tax – General Article, withhold income tax revenue from the county so that the total amount withheld is equal to the amount by which a county failed to meet the requirements in subsection (a) of this section.

(ii) The Comptroller shall distribute the amount withheld under subparagraph (i) of this paragraph directly to the county board.

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